

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

YUICHI MIYAYAMA,

## Plaintiff

VS.

Quality Loan Service Corporation, a California Corporation; Ditech Financial LLC fka Green Tree Servicing LLC,

## Defendants

Case No.: 2:16-cv-00413-JAD-CWH

## **Order Granting Motion to Dismiss and Closing Case**

[ECF No. 39]

11 Plaintiff Yuichi Miyayama purchased property encumbered by Ditech Financial LLC's first  
12 deed of trust and brought this action to stop Ditech from foreclosing on that interest. On Ditech's  
13 motion, I dismissed all of Miyayama claims with leave to amend his claim for violation of NRS  
14 107.080 by February 2, 2017, if he could truthfully plead that neither he nor Urawee Kaithong  
15 received notice that Ditech was foreclosing. When the deadline for amendment came and went  
16 without an amended complaint or a request for an extension, Ditech moved for an order converting  
17 the dismissal of the NRS 107.080 claim into a with-prejudice dismissal and closing the case.<sup>1</sup> The  
18 deadline for opposing that motion passed without opposition or a request for an extension.<sup>2</sup>

Local Rule 7-2(d) states that the “failure of an opposing party to file points and authorities in response to” a motion to dismiss “constitutes a consent to the granting of the motion.”<sup>3</sup> I invoke LR 7-2(d), deem the plaintiff’s failure to file an amended complaint as a tacit admission that Miyayama lacks the facts needed to support an NRS 107.080 claim, and deem his failure to oppose Ditech’s most recent motion to dismiss as consent to granting this motion. Accordingly,

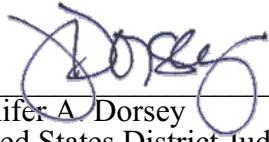
25 || <sup>1</sup> ECF No. 39.

<sup>26</sup> See ECF No. 42 (noting that the deadline for response was 2/17/17 and that no opposition was filed).  
<sup>27</sup>

28 | <sup>3</sup> Nev. L.R. 7-2(d).

1 IT IS HEREBY ORDERED that Ditech's Motion to Dismiss [ECF No. 39] is GRANTED.  
2 The lone remaining claim in this case is DISMISSED with prejudice; the Clerk of Court is directed  
3 to CLOSE THIS CASE.

4 DATED February 22, 2017

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6 Jennifer A. Dorsey  
United States District Judge

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